S.B. Cr. Misc. Petition NO.312/2007

Rana Ram
Vs.
The State of Rajasthan

Date of Order :: 11-07-2007

HON'BLE MR. JUSTICE H.R.PANWAR

Shri Mahesh Bora, for the petitioner.

By the instant petition under Section 482 Cr.P.C., the petitioner seeks quashing of FIR No.352/2004, P.S. Nimbaheda, District Chittorgarh for the offence under Section 8/18 of the NDPS Act.

Heard counsel for the petitioner and perused the FIR and the judgment and order dated 16.10.2006 passed by the Special Judge, NDPS Cases, Chittorgarh in Sessions case no.67/2004 whereby the accused Shyam Lal and Bhakar Ram have been acquitted by giving benefit of doubt and keeping the investigation pending against the present petitioner under Section 173(8) Cr.P.C.

It is contended by the learned counsel for the petitioner that co-accused have already been acquitted by the trial Court,and therefore no useful purpose would be served in allowing the FIR to stand and hold the investigation against the petitioner.

Learned counsel having relied on the decision of the Special Judge, NDPS Cases acquitting the two accused persons by giving benefit of doubt. He further submits that trial court did not believe the recovery.

I have carefully gone through the FIR. It appears that Police got information that one truck is coming from Bari and carrying the illegal opium and three persons were in the said truck. 24.2 kgs. Opium was recovered from Shyam Lal and 22.1 kgs. from Bhakar Ram and a bag containing 15.80 kg opium alleged to have been pertaining to the present petitioner who ran away by seeing the police party was recovered by the police. The petitioner could not be apprehended, and therefore after investigation, police filed the challan against Shyam Lal and Bhakar Ram and investigation against the present petitioner was kept pending under Section 173(8) Cr.P.C.

For the purpose of quashing the FIR, it is settled that if the FIR does not disclose the cognizable offence or it is absurd or barred by any provision of law as has been held in the State of Haryana Vs. Bhajan Lal, 1992(Suppl.) 1 SCC 335, in my view the allegation against the present petitioner as disclosed in FIR is that 15.80 kg opium was recovered alleged to be in possession of

petitioner and by seeing the police party, he ran away. Since then he is absconding, the FIR is of 13.6.2004 and he has not been apprehended for investigation, in my view, it is not a fit case to quash the FIR only on the ground that co-accused have been acquitted.

The petition is therefore dismissed.

[H.R.PANWAR],J.

Praveen